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**UNITED STATES DISTRICT COURT,  
 NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL ABORTION FEDERATION  
 (NAF),

Plaintiff,

vs.

THE CENTER FOR MEDICAL  
 PROGRESS; BIOMAX PROCUREMENT  
 SERVICES, LLC; DAVID DALEIDEN (aka  
 "ROBERT SARKIS"); and TROY  
 NEWMAN,

Defendants.

) Case No. 3:15-cv-3522 (WHO)

)

) Judge William H. Orrick, III

)

) DEFENDANTS' OPPOSITION TO  
 ) NATIONAL ABORTION  
 ) FEDERATION (NAF)'S

) SUPPLEMENTAL ADMINISTRATIVE  
 ) MOTION TO FILE UNDER SEAL  
 ) NAF'S MOTION FOR PRELIMINARY  
 ) INJUNCTION

)

) Hearing Date:

) Time:

1 Defendants David Daleiden and the Center for Medical Progress file this Opposition to  
2 NAF's Supplemental Administrative Motion To File Under Seal to assert the preeminence of the  
3 public policy favoring public access to court documents as stated in this Court's Standing Order on  
4 Administrative Motions to File Under Seal and the relevant cases, and for that reason to object to  
5 the substantive briefing on the Motion for Preliminary Injunction, or any part thereof, being filed  
6 under seal.

7 Defendants further seek clarification from the court as to the procedure for filing their  
8 Opposition to the Preliminary Injunction so as to comply with both the Local Rules and this  
9 Court's Standing Order, as well as with the Protective Order and the Temporary Restraining Order.

### 10 ARGUMENT

11 This Court's Standing Order on Administrative Motions to File Under Seal states that there  
12 is a "strong presumption in favor of public access that applies to all documents other than grand  
13 jury transcripts and pre-indictment warrant materials" (citing *Kamakana v. City & Cnty of*  
14 *Honolulu*, 447 F.3d 1172, 1178 (9<sup>th</sup> Cir. 2006)). Reflecting that strong presumption, the Court  
15 requires that parties seeking to seal material must articulate reasons supported by specific factual  
16 findings to warrant sealing. In keeping with N.D. Local Rule 79-5(d)(1)(A), this Court's Standing  
17 Order also states that reference to a protective order is not sufficient grounds to seal a document.  
18 Moreover, conclusory assertions of harm are also insufficient.

19 On November 13, 2015, Plaintiff National Abortion Federation (NAF) filed its Motion for  
20 Preliminary Injunction in this matter and accompanying exhibits. While portions of the motion  
21 were filed under seal, many more citations to Protected Material in the motion were left unredacted  
22 and available to the public.

23 On November 18, 2015, Catherine Short, counsel for David Daleiden, e-mailed Derek  
24 Foran, counsel for NAF, pointing out that the motion contained many instances of Protected  
25 Material not being redacted, mostly relating to deposition testimony which, pursuant to terms of the  
26 protective order, was automatically designated "Highly Confidential."

1 Of more concern to the defendants, however, were citations to and incomplete quotations  
2 from Mr. Daleiden's recordings of the NAF meetings, produced to NAF in discovery. These partial  
3 quotations and NAF's own representations about these conversations gave a false picture of the  
4 contents of the videos, a picture that Defendants would be unable to correct, due to the  
5 constrictions of the Protective Order. (Declaration of Catherine Short, Ex. A.)

6 Having set forth the problem, Ms. Short stated, "The defendants intend to seek leave of the  
7 court to include in their opposition, not under seal, any Protected Material that defendants believe  
8 necessary and appropriate to respond to NAF's citation of material in violation of the Protective  
9 Order. Please let us know if you oppose this application." *Id.* NAF's counsel promptly objected.  
10 Declaration of Catherine Short, Ex B.

11 NAF then proceeded to file this supplemental motion to file under seal. The memorandum  
12 in support of the motion states that the reason for placing additional contents of the motion under  
13 seal is that "NAF, its staff, its members, and affiliates will suffer harassment, intimidation, invasion  
14 of privacy, injury to reputation, and threats of violence if the documents and materials identified in  
15 this motion are publicly released." Motion at 2:20-22.

16 This claim is demonstrably meritless. In reviewing the portions of NAF's Preliminary  
17 Injunction Motion that NAF seeks in this supplemental administrative motion to seal, the Court  
18 will see that there is nothing that could expose NAF, its members, or anyone else to any harm. The  
19 only one harmed by NAF's unredacted motion is the defendants, because NAF has already put out  
20 in public its erroneous rendition of the contents of the videos, which under the terms of the  
21 Protective Order, Defendants may not correct.

22 More significantly, Defendants submit that NAF's request to file under seal is inappropriate  
23 for the briefs on the Preliminary Injunction in this case, which all parties admit to be of great public  
24 interest. Nothing in Plaintiff's Motion warrants being kept from the public. No "compelling  
25 reason" justifies it.

26 Further, this issue will come up again with respect to Defendants' Opposition to the  
27 Preliminary Injunction, in that material designated as Confidential or Highly Confidential under the  
28

1 Protective Order and/or arguably covered by the Temporary Restraining Order will be cited.  
2 Defendants submit there will be no compelling reason for the Opposition to be sealed on account of  
3 these citations.

4 Further confusion arises in that N.D. Local Rule 79-5 appears to provide that only parties  
5 seeking to file material under seal may initially file documents with portions redacted.

6 Under these circumstances, Defendants request guidance from the Court as to the procedure  
7 it should follow in filing its Opposition, in order to comply with the Protective Order, the  
8 Temporary Restraining Order, Northern District Local Rule 79-5, and this Court's Standing Order  
9 Regarding Administrative Motions to File Under Seal.

10 **CONCLUSION**

11 For the above reasons, Defendants oppose NAF's supplemental motion to seal portions of  
12 the Preliminary Injunction Motion. Defendants further seek clarification and direction from the  
13 court on how to proceed when filing their Opposition.

14 Date: November 19, 2015

15  
16 Respectfully submitted,

17 /s/ Catherine Short

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